

SENATE COMMERCE COMMITTEE
March 18, 1971, 11:00 a.m.

Statement of Secretary of Transportation John A. Volpe
Before the Senate Commerce Committee
March 18, 1971

"Motor Vehicle Crash Losses and
Their Compensation in the United States"
A Report Submitted in Compliance with P. L. 90-313

Mr. Chairman and Members of the Committee:

I'm very happy to be here today to discuss the final report of the Automobile Insurance and Compensation Study called for by P. L. 90-313.

Last fall when I appeared before this Committee, I noted that the research findings of the Study were largely contained in a series of published reports which now number twenty-three. Our policy findings and recommendations are included in the report we are releasing today. This report summarizes the principal factual and judgmental findings of the Study, analyzes the basic alternatives to the present system, and makes a tentative judgment as to what should be done by way of change in the future and how that change should be accomplished.

I see no point in dwelling here on the problems and disabilities of the present system. I described our own views generally last October before this Committee, and they are detailed in the various

reports of the Study. Moreover, there appears to be a very broad and heartening consensus among nearly everyone concerned -- the industry, many elements of the bar, consumer spokesmen, insurance regulators, and legislators and executives at all levels of government -- that the present system is not working well and should be changed.

Nor will I attempt to assess here the relative merits of all the various reform plans that have been offered as alternatives to the present system. In this thicket, there is plainly much less of a consensus; the complexity of the subject and its problems make possible an almost limitless number of combinations, permutations and variations of recovery rules, insurance coverages, etc. Our report, without trying to be exhaustive, discusses the broad range of the principal alternatives and some of the advantages and disadvantages of each. I am certain that these hearings will do much to draw out the merits of the various approaches.

What I would like to address myself to this morning are the recommendations contained in this report. A number of rather important considerations or judgments have influenced the framing of these recommendations.

First, it seems clear, at least to us, that there remains much legitimate uncertainty about how far and how fast the public wants or is willing to go in changing the reparations system. It is also clear that there exists genuine and warranted concern as to the unknown and essentially unknowable price and cost implications of any major change in the system, which of course would ultimately affect the cost and quality of service to consumers of insurance. Regulators and other responsible public officials would appear to share these feelings. We, ourselves, don't claim to have definitive answers to these questions either. As a result, it seems to us that we should seek change through State action, but consistent with the broad outlines or principles of a system such as that described below. We need not and do not insist that a single reform system be imposed upon all the States. The experience of the States should have much to tell us about the most desirable final configuration of the motor vehicle reparations system.

Nonetheless, because motor vehicle travel is so much an interstate activity, States should eventually attempt to develop similar reparations systems. While we find great intrinsic merit in the State system of insurance regulation, and in ultimate State control of decisions regarding their own reparations systems, some kind of broad national goals or standards, which are advisory, would seem to be very useful and appropriate.

Further, change in the auto accident reparations system at the State level has clearly moved off dead center and would appear to be achieving some momentum. I could not have made that statement a year ago. I think that this constructive move should be strongly encouraged, perhaps guided and helped, but not pre-empted by Federal action.

With those general remarks, let me turn to the recommendations themselves.

Summary of the Recommendations

We believe that the States should begin promptly to shift to a first-party, non-fault compensation system for automobile accident victims.

We believe that this can be done in such a way that we can reverse ourselves, if the actual performance of the system doesn't meet our expectations.

We believe that recovery for "general" or intangible damages should be drastically limited and carefully circumscribed.

We believe that our relevant institutions, public and private, and the citizens who man them, should be given adequate time to plan for, adapt to and assess the performance of a new system.

We believe that the change should take place at the State level, but that there should be general national goals or principles toward which the States will be moving.

It is proposed that all medical and rehabilitation costs be made recoverable from the victims' own auto insurers on a first-party, non-fault basis. Coincident with this change could be a restriction on the recovery of general damages to cases involving death, permanent impairment or disfigurement, or total medical costs exceeding a rather high threshold. Victims could continue to recover other personal injury economic losses and property damage losses under the existing system. Later, the rest of personal injury-related economic loss compensation could be shifted to a first-party, non-fault basis.

Finally, there is the question of a shift of some or all of the property damage loss compensation now being made under third-party fault rules to a first-party, no-fault basis. Whether, when and to what extent this should take place should depend upon the public's reaction to no-fault accident compensation for personal injury, the development of a reasonably sound system for rating the relative damageability and repairability of motor vehicles, and the achievement of broad understanding of the inherent

"fairness" of using loss exposure as a major factor in pricing insurance to the individual. The more serious and immediate problems and the greater opportunity for cost savings, seem to be in the personal injury field.

It is possible that further consideration of the matter by the Congress, the States and the industry may dictate that the implementation process should be broken down into several "stages." We are not doctrinaire on this point, only on the general direction in which we should be heading and on the point that meaningful change should not be unnecessarily delayed.

We hope that there would be a minimum of argument over whether full implementation would or would not result in cost savings to the public. We simply cannot predict the absolute long-range financial impacts of such a fundamental change with any reasonable precision, nor should we allow ourselves to be unduly distracted by those who wish to argue the question one way or the other. As various first-party no-fault plans are implemented in different States, answers will be forthcoming to the question of whether some variant of the program we suggest works better than the present system or not. In this manner, States may be able to spare themselves most of the uncertainty, and greatly reduce the financial risk, that would be involved in any single step, "all the way," perhaps irreversible change of the system. A first

step, for example, might be designed to give confidence that the added costs of ensuring full medical coverage to all victims will be offset by the "savings" achieved by revising the rules on general damages. Thus, reform as proposed might allow systems to absorb changes in digestible and reasonably predictable amounts and allow them to reverse gears or slow down, or perhaps even speed up, as experience indicates.

Let me describe more specifically the broad outlines of a possible ultimate system which we believe is consistent with the findings and conclusions of our study and the principles we endorse. The policy limits and deductibles I will use should be recognized for what they are -- illustrative. (Our Study findings do indicate that they are in appropriate orders of magnitude.)

AN ILLUSTRATIVE SYSTEM

We believe that the present system needs change badly, and needs it now. Based on our extensive study, we believe that the most promising avenue for changes which will better serve the driving public is in the direction of a first-party, no fault-system, combined with modification of the rule on general damages. More specifically, we think that a system like the one described below shows the most promise. But a little observation is worth a great deal of speculation. Only last January 1, did Massachusetts

become the first state to take a step toward the system we recommend. Other states may follow, and they should. Only out of states' experience with variants of the kind of plan we recommend will we be able to learn with assurance which first-party, no-fault plan is best. If the new plan fulfills our expectations, it should become as dominant in the states as third-party fault plans are today.

. Compulsory First-Party Benefits

Every owner of a motor vehicle would be required to carry insurance protecting himself, his family and every uninsured passenger or pedestrian suffering injury as a result of an accident involving the insured vehicle for all economic losses they thereby incur, subject to reasonable limits and deductibles. In addition, the insurance should protect the insured and all members of his family who are part of the same household against losses suffered when they are pedestrians or passengers in another vehicle.

. Required Medical Benefits

Full coverage for all medical benefits should be provided with a relatively small permissible deductible per accident

but with very high mandatory limits. Any deductible or limit voluntarily assumed by the car owner on behalf of himself and his household would not apply, however, to the medical losses of uninsured pedestrians. Included in covered benefits will be all medical rehabilitation expenses within the limits provided. Coverage should be primary as among private systems -- that is, payment of benefits by a carrier under this coverage should automatically remove the obligation of any other insurance carrier to pay benefits to the extent that the costs are covered by automobile insurance. However, there should be the greatest freedom open to the insured in selecting his choice of coverage.

Income Loss Protection

Coverage would have to be afforded for a relatively high percentage of earned income of the injured or deceased auto accident victim. There should be a short permitted waiting period at the option of the insured for the start of benefits and a permitted monthly benefit ceiling by the insurer of perhaps \$1,000. Voluntarily assumed deductibles or limits would not apply to uninsured pedestrians. Higher benefits could be made available at the options of the insurer and insured.

This coverage might pay wage continuation benefits any time an injured person is prevented from working, either as a result of his disability or as a result of his participation in an approved rehabilitation program. The benefit program should provide for modification as provided contractually between the insurer and insured because of changed circumstances, e. g., the remarriage of a surviving spouse, surviving children reaching their majority, etc.

The minimum duration of mandatory income loss protection should, and probably could, be finally established only after some further investigation and experimentation. Initially, minimum duration might be set at three years, except for victims in approved rehabilitation programs whose protection would continue as long as necessary. Longer durations should be optionally available from the beginning and should also be considered for inclusion in the mandatory coverage as experience dictates. A lump sum burial benefit of perhaps \$1,000 per person could be provided, with any higher benefits being optional on the part of both the insurer and the insured.

Lost Service Benefits

Coverage for the cost of necessary replacement services for non-employed persons (e. g., housewives) could be required

up to a benefit of perhaps \$75 per week, with a permitted waiting period for benefits at the option of the insured. Minimum duration of mandatory protection might be the same as for income loss.

Property Damage (if experience under first-party personal injury plans are successful)

Coverage of damages to property, including the insured vehicle, might be required, but with a permissible deductible referable to the vehicle only at the option of the insured of up to a rather high level, perhaps \$1,000 or a third of the value of the car, and with a permissible limitation of coverage by the insurer of \$10,000 per accident. There would be no deductible with respect to the non-vehicular property of others damaged in an accident.

Elimination of Action for Damages

No recovery for any loss covered by the applicable required coverage would be permitted in any private action for damages. The insured victim's sole recourse for benefits for wage loss, medical loss, lost services, funeral expense (and property damage) should be limited to the insured's required coverage and any additional optional coverages that he has elected to purchase, whether under an auto insurance policy or other voluntary loss reparation program.

The existing right to sue for damages resulting from negligence in car crashes might be drastically curtailed, perhaps remaining only for intangible losses subject to a limitation: no person should recover for intangible losses unless he established that he suffered permanent impairment or loss of function or permanent disfigurement, or that he incurred personal medical expenses (excluding hospital expenses) as a result of the accident in excess of a rather high dollar threshold. The dollar threshold initially chosen should not be considered inviolable but should be reviewed as to its appropriateness at regular, specified intervals.

Drivers could, of course, continue to insure against this residual third-party liability.

WHERE DO WE GO FROM HERE?

The Department's study is now completed; you have our final report and our best judgment as of this point in time as to the kind of a reparations system which is most promising for the future. As I said, we think the present system needs change badly and needs it now.

What we would hope to see now is for the Congress, after listening to the views of the other interested parties, to enact a concurrent resolution setting forth the principles of a reparations

system toward which the States should strive. These "principles" or "goals" would give guidance, direction and impetus to the States' own reform efforts. We have gone as far as we can without observation of actual experience. Now is the time for the States to act, and we will help them. We have completed our study; now let us implement it.

Both the Congress and the Executive should measure the States' progress toward these goals over a reasonable period of time. The Department of Transportation should maintain a program of continuing surveillance of the matter, and provide direct cooperation and assistance to the States. Two years from now, when we have had time to analyze the experience of the several states under new systems, there should be a re-examination of the whole question of auto accident compensation reform and whether or not some further action is desirable.

We have prepared a draft concurrent resolution along these lines, and today I have formally submitted this proposed resolution to the President of the Senate and Speaker of the House for the consideration of the Congress. If such resolution is passed, we would look for the 50 States (and four other districts) to undertake introduction of systems along the general lines we suggest. We will assist both the States and instrumentalities of the States in this effort. In addition to ensuring that the ultimate development

of the system is brought about by those who we believe can do it best, the States themselves, this ensures the opportunity for full nationwide participation in such development.

Mr. Chairman, when I was last before you on this subject, I observed that the problem of motor vehicle compensation is far more complex and far less easily resolved than many appear to believe. This, obviously, has not changed in the last six months. But complexity, difficulty or whatever, should no longer stand in the way of action. This Administration and I want to cooperate with and support those who also want to get on with the process of reform.

Mr. Chairman, this completes my prepared testimony. We will be happy to answer any questions you or the other members may have.

CONCURRENT RESOLUTION

Whereas the existing system for compensating motor accident victims results in the unavailability of any benefits to many persons sustaining loss arising out of motor vehicle accidents, including many seriously injured persons and the dependents of many persons killed in such accidents; and

Whereas the existing system's uneven allocation of compensation benefits results in the excessive compensation of many persons sustaining only minor loss, and whereas by contrast many persons with severe and permanently crippling injuries recover only a fraction of their losses in compensation benefits from the system; and

Whereas administration of the system consumes an inordinate amount of resources which might be put to better use in compensating accident victims; and

Whereas the system's benefits tend to be ill-timed and unresponsive to victims' needs both because of long delays in payment and because benefits are predominantly in the form of lump sum payments, and whereas effective rehabilitation of the accident victim tends to be a practical impossibility under the system; and

Whereas the system is supported by, and dependent upon, compulsory insurance or financial responsibility laws which exert varying degrees of compulsion upon motorists to purchase liability insurance without invariably assuring motorists of the availability of automobile insurance; and

Whereas the counterproductive regulatory pressures placed by the system on insurers has led to the development of socially undesirable competition in risk selection accompanied by arbitrary and capricious declinations of insurance, cancellations and refusals of renewal with the consequent growth of a high-risk automobile insurance market serviced in some cases by insurers of questionable financial stability; and

Whereas the system has imposed intolerable burdens on State officials responsible for regulating the rating, underwriting and claims practices of insurers and responding to consumer complaints relating thereto; and

Whereas the system has placed an unreasonable workload on the Federal and State courts which have been forced to devote a disproportionate part of their time and resources to motor vehicle accident civil litigation; and

Whereas the system has resulted in the denial of substantial and equal justice to seriously injured accident victims who are unable to withstand the financial burdens consequent upon long court delays and who are, therefore, forced into inadequate settlements of their claims; and

Whereas the existing liability insurance system renders it impossible rationally to allocate insurance premium costs so as to reflect the ability of a motor vehicle to protect its occupants from serious injury in the event of a crash or to reflect differing costs of repairing motor vehicles; and

Whereas, however, prompted by the Automobile Insurance and Accident Insurance Study mandated by Congress, the Hearings of Congressional committees and the various hearings and studies conducted by many State legislatures, it is now almost universally conceded that there is an imperative need for prompt and far-reaching reform; and

Whereas one State, the Commonwealth of Massachusetts, has taken the lead by enacting the first partial no-fault plan in the country and many of the State legislatures are even now considering far-reaching reforms suited to the needs of their constituencies; and

Whereas the principal problems and abuses with respect to automobile insurance clearly stem from defects in the system for compensating accident victims and from the compulsions upon motorists to obtain the insurance which sustains and upholds that system rather than from defects in the insurance institution or in its regulation by the several States; and

Whereas assumption of the present comprehensive State regulatory authority over automobile insurance by the Federal Government would be fraught with great and grave consequences giving rise to issues and problems of great magnitude, and is highly undesirable; and

Whereas mere speculation without actual observation of experience with a new plan is an inadequate basis for massive, uniform national reform; and

Whereas one State, Massachusetts, has taken an important step toward the principles endorsed herein, and others promise to do so soon so that variants of the plan we endorse will, in the laboratory of the several States, soon be proved and perfected by experience.

Now therefore be it resolved:

That it is the sense of the Congress that the regulation of insurance should, in general, continue with the States, subject to the admonition, however, that Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation.

That it is the further sense of the Congress that there must evolve at the State level a rational, equitable and compatible reparation system for motor vehicle accident victims supported and sustained by a similarly rational, equitable and compatible private insurance system, such combined system to be built upon the following principles:

1. Basic benefits should be forthcoming to the injured person on a first-party, contractual basis to the end that such person would be receiving benefits from the insurer with whom he has contracted and to whom he has paid his premiums and to the further end that competition among insurers would take the form of competition to provide prompter and more effective compensation for the premium payer.

2. Basic benefits under the reparations system should be payable to all accident victims without regard to fault, excluding, of course, those who willfully injure themselves.

3. Such benefits should provide compensation for all economic loss, subject to reasonable deductibles and limits, and the tort lawsuit should be eliminated, at least pro tanto, avoiding the adversary process for the mass of accidents.

4. The function of the reparations system should be to afford adequate, but not excessive, compensation to the accident victim at minimum cost. Therefore, the benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasible.

5. Maximum choice should be afforded the motorist in selecting his insurance source provided the coverage complies with the principles for the required minimum mandatory coverage.

6. Rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system.

That it is the further sense of the Congress that the Secretary of Transportation be authorized and directed to request that the Council of State Governments, using the appropriate instrumentalities, develop model legislation for submission to the States for their consideration. The Secretary is further authorized and directed to analyze the actions of the States, their legislatures and insurance regulatory officials to determine to what extent such States act hereafter to bring about motor vehicle

insurance and accident compensation systems consistent with the intent of this resolution; to provide technical assistance to and interact with such States, their legislatures and insurance regulatory officials in effecting in all the States compensation systems consistent with such principles, and to report such progress as has been made, or is being made, in effecting such compensation systems, with a final report to be made by the Secretary not later than 25 months hereafter detailing the action taken by each State in moving toward or providing an automobile accident compensation system consistent with these principles; the experience of the States with these systems; and, concluding with the Secretary's views regarding the feasibility of attaining a satisfactory and compatible motor vehicle accident reparations system without further Federal legislation.